ficiary at any time provided the policy was not then assigned. Under a statute which provides that the widow "shall be entitled, by way of dower, to an absolute property in the one-third part of all" her husband's "movable effects in possession, or reducible to possession, at the time of his death," his widow claimed one-third of the proceeds of these policies in the hands of the executors. (1915 HAWAIIAN REV. LAWS, § 2977.) *Held*, that the widow is not entitled to any part of the insurance money. *Estate of Castle*, 25 Hawaii, 38.

For a discussion of principles involved, see NOTES, page 587.

SUNDAY LAWS — SUNDAY CONTRACTS — EFFECT OF DELIVERY ON WEEK-DAY. — A contract for the sale of hay was entered into on Sunday in violation of a statute making such contracts void (1909, REV. STAT. SASKATCHEWAN, c. 69, § 3). On a week day following, the vendor delivered the hay and the purchaser accepted and resold it. The vendor brought an action upon the contract made on Sunday, and in the alternative, for goods sold and delivered. *Held*, that on amending his pleading the plaintiff is entitled to have the defendant account for the proceeds of the resale. *Schuman* v. *Drab*, 49 D. L. R. 59 (Saskatchewan).

Since the Sunday contract was declared void by statute, obviously no rights could be enforced under it. Nor would it be validated by a subsequent recognition on a week day. *Riddle* v. *Keller*, 61 N. J. Eq. 513, 48 Atl. 818; *Day* v. *McAllister*, 15 Gray (Mass.) 433; *Acme, etc. Adv. Co.* v. *Van Derbeck*, 127 Mich. 341, 86 N. W. 786. Had the property been delivered on Sunday, title would not have passed to the purchaser and the vendor would be entitled to maintain replevin or trover. *Winfield* v. *Dodge*, 45 Mich. 355, 7 N. W. 906; *Adams* v. *Gay*, 19 Vt. 358. See 15 HARV. L. REV. 317. But the parties can make a new valid contract on a subsequent week day with reference to the same subject matter. *Sherry* v. *Madler*, 123 Wis. 621, 101 N. W. 1095. This new contract may be implied from dealings with each other's property. *Vinz* v. *Beatty*, 61 Wis. 645, 21 N. W. 787. In the principal case, the subsequent delivery and acceptance is strong evidence of such a new contract. *Bradley* v. *Rea*, 103 Mass. 188. Hence it would seem that the vendor should have recovered on the count for goods sold and delivered. The majority, however, seem to proceed on the theory that there is no evidence of a new contract, and hence that title remained in the vendor and that the sale by the purchaser was a conversion. This view of the facts seems hardly tenable.

TAXATION — CONSTITUTIONAL RESTRICTIONS — RATE IN INHERITANCE TAXATION AFFECTED BY FOREIGN PROPERTY. — The inheritance tax laws of New Jersey provide that the transfer of property within the State owned by non-resident decedents shall be taxed (1909 N. J. LAWS, 325 as amended 1914 N. J. LAWS, 267). This tax is computed by figuring the amount which would be due if the decedent had died a resident with all his property within the State. The actual tax bears the same ratio to this hypothetical tax as the property within the state bears to all the property. A graduated tax is imposed on larger bequests in the case of resident decedents. Suits were brought to test the constitutionality of this method by the representatives of wealthy non-resident decedents. *Held*, that the tax is valid. *Maxwell* v. *Bugbee*, U. S. Sup. Ct., Nos. 43 and 238, October, term, 1919.

For a discussion of this case, see NOTES, p. 582, *supra*.

TAXATION — PARTICULAR FORMS OF TAXATION — INHERITANCE TAX — WHEN A NONRESIDENT IS DOING BUSINESS — WITHIN THE STATE. — Section 220 (1) of the New York Tax Law provides for a succession tax ". . . when the transfer is by will or intestate law of capital invested in business in the state

by a nonresident of the state doing business in the state. . . ." The decedent, Hetty Green, had large sums of money invested in the state, the income of which she usually reinvested there. She also changed her investments from time to time, but she maintained no office for the transaction of business, nor did she hold herself out to the public as a banker, broker, or money-lender. *Held*, that the capital so invested is not taxable under this statute. *In re Green's Estate*, 178 N. Y. Supp. 353.

A prior decision by the same court that this capital was not "invested *in business* in the state by a nonresident *doing business* in the state," was reversed and remitted for further inquiry. *In re Green*, 184 App. Div. 376, 171 N. Y. Supp. 494. In a scholarly opinion, the court has now reasserted its earlier decision. As it points out, the term, "business" is not a word of art at common law. See *The People ex rel. The Parker Mills* v. *The Commissioners of Taxes*, 23 N. Y. 242; *Smith* v. *Anderson*, 15 Ch. Div. 247, 258. Its indefinite connotation in ordinary speech, it likewise points out, and there seems to be no judicial interpretation of any similar statute. The judicial definition of the term in construing statutes dealing with corporations is not binding, since what is not business when done by an individual may often be business when done by a corporation organized for that express purpose. See *Smith* v. *Anderson*, *supra*, 260. Statutes imposing liability upon married women for contracts made while engaged in business are more nearly *in pari materia* with the statute in the principal case, and these were strictly construed. *Nash* v. *Mitchell*, 71 N. Y. 199; *Wheeler* v. *Raymond*, 130 Mass. 247. It is a well-recognized rule that statutes imposing taxes are to be construed strictly against the state. *Crocker* v. *Malley*, 249 U. S. 223; *Gould* v. *Gould*, 245 U. S. 151. In this situation, the decision displays a spirit of fairness and moderation which unfortunately has not always characterized the policy of legislatures and of courts in dealing with the taxation of estates of nonresidents.

UNFAIR COMPETITION — TRADE-MARKS AND TRADE NAMES — "PASSING OFF" BY USE OF DESCRIPTIVE WORD HAVING SECONDARY MEANING. — The plaintiff while holding patents for brushes set in rubber used exclusively the word "Rubberset" in selling its brushes. At the expiration of the patent, the defendant commenced manufacturing brushes set in rubber and sold them with the word "Rubberset" stamped on the handle together with its name as manufacturer. The plaintiff seeks to enjoin the use of the word. The court found that there was no likelihood of purchasers being misled as to whose goods they were buying. *Held*, that the injunction be denied. *Rubberset Co.* v. *Boeckh Bros. Co., Ltd*, 49 D. L. R. 13.

The plaintiff could have no property in a word which was purely descriptive of his product. *In re Swan & Finch Co.*, 259 Fed. 990 and 991. See 12 HARV. L. REV. 349. Nevertheless, words which are merely descriptive often come to have for the purchasing public a secondary meaning, as indicating the product of a particular manufacturer. In such cases, the manufacturer will be, to a certain extent, protected against the use of the word by others. *Shaver* v. *Heller & Merz Co.*, 108 Fed. 821; *Saalfield Pub. Co.* v. *Merriam Co.*, 238 Fed. 1. But the protection is given, not to any property in the word, but to the good will of the business. *Pillsbury-Washburn Flour Mills Co.* v. *Eagle*, 86 Fed. 608; *Crescent Tool Co.* v. *Kilborn & Bishop Co.*, 247 Fed. 299. Consequently, for relief to be granted, it is essential that the public be deceived or confused as to whose wares are being purchased. *Goodyear's India Rubber Glove Manufacturing Company* v. *Goodyear Rubber Co.*, 128 U. S. 598; *M. Werk Co.* v. *Grosberg*, 250 Fed. 968. Conceding the facts found by the court in the principal case, its result follows. But it may well be doubted whether there was not in fact sufficient danger of deception to justify a court in at least compelling the defendants to take active precaution against possible confusion. *Cf. Shredded Wheat Co.* v. *Humphrey Cornell Co.*, 250 Fed. 960.